

**Written evidence submitted by Long Harbour Ltd & HomeGround Management Ltd
(BSB24)**

Public Bill Committee on the Building Safety Bill

Company background

1. Long Harbour is an FCA regulated residential real estate investment manager. On behalf of its clients, Long Harbour has invested approximately £2bn in the UK residential sector, including ground rent portfolios valued in excess of £1.4bn, comprising over 190,000 leasehold properties.
2. The residential ground rent portfolios acquired as investments for Long Harbour's clients (mainly pension funds) are managed by Long Harbour's associated company HomeGround Management Ltd ("HomeGround"), a professional ground rent asset manager. It is now the second largest manager of freeholds in the UK, with overall responsibility for approximately 190,000 leasehold properties.
3. HomeGround's services as an asset manager include the collection of ground rent, handling consents and administering the formalities contained in leases and other title documents relating to re-sales of the properties on behalf of its landlord companies. In addition, it maintains good order in its buildings, monitors compliance with standards and regulations, and tries to ensure good neighbourliness amongst leaseholders and a minimum of disputes between them. It employs qualified and experienced professionals across a number of service teams to assist residential leaseholders with a range of queries they have in relation to their leases and properties. This includes a team of Estate Managers that oversee the appointment of third-party managing agents and monitors their performance in the day to day running of the buildings within the portfolio.
4. HomeGround has also committed significant investment to building a dedicated Building Safety Team with specific expertise in fire safety, and indeed the advice and support of that team is provided to all buildings without cost to the leaseholders as part of the landlords' stewardship obligation. Over the last couple of years, we have focused on remediation of buildings found to have unsafe cladding or other significant fire safety issues. We have also conducted a wider review of our portfolio, so as to enhance our ability to monitor building safety requirements generally.

Executive Summary

5. Long Harbour and HomeGround Management Ltd welcome the Building Safety Bill and the important work of the Public Bill Committee in examining the Bill as currently drafted.
6. Building safety, and the safety of residents, is undoubtedly one of the most important areas of focus in the residential housing sector, and one in need of urgent and immediate reform. Since it became clear that the current building regulations were unfit for purpose, we have worked with a wide range of relevant stakeholders across Government, Parliament and industry to ensure the best measures are designed and implemented, with the aim of delivering a world-leading building safety regime.
7. This Bill certainly represents significant progress towards this aim and the measures to increase accountability and transparency are an essential part of this. However, our main concern –

which is shared by other operators in this space – is that the Government has not given enough consideration to who exactly will perform what role when it comes to the oversight of safety, particularly in terms of the Accountable Person, which is a critical role within this new framework.

8. This lack of detail characterises the rest of the Bill, making it challenging to comment on and scrutinise it to the degree required. We would therefore welcome clarity across a number of other areas – which we have set out in the appendix of this document - to ensure that we are able to provide a clear view on what the Bill will mean for residents in both the short and long-term.
9. As drafted, the Building Safety Bill will effectively create a whole new regulatory system and regime which will rely heavily on a pool of highly trained and experienced professionals. This regime will come at significant cost and the Government needs to be clear about where these costs will fall, especially if they are removing professional freeholders who are currently providing oversight.
10. Similarly, the Government needs to face up to the reality that current building safety crisis is much bigger than it first appeared. New issues are constantly coming to light and we need to act more quickly to support the residents who are facing these challenges.
11. We all know that these problems have been caused by historic regulatory failures, dating back decades. We need to be careful that the solution doesn't simply absolve the Government of its responsibilities and pass them on to consumers, whether that's existing or future residents.
12. Further to the above, it is important to note that, running concurrently with this legislation, the Government is introducing reforms that will ultimately remove professional freeholders from the residential market, giving homeowners no choice but to take on numerous responsibilities, liabilities and obligations, which would otherwise sit with the freeholder. As professional landlords, freeholders have the experience and professional resource at our disposal to effectively perform these obligations. However, we are concerned that if the Government pursues its current proposals to reform the residential leasehold sector, including the removal of ground rent, institutional investors like ourselves will cease to invest and subsequently withdraw from the market.
13. The inevitable consequence is that the expertise of professional and responsible freeholders will no longer be available to ensure compliance with landlord covenants, leading to a decline in professionalism in the market, to the detriment of residents and the long-term maintenance of properties. Poor practice by smaller, unregulated, and unscrupulous investors is also likely to proliferate. The leasehold reform agenda will therefore make these well-intentioned reforms to building safety harder, more complicated to deliver, and more expensive for consumers. Most importantly, this will have a direct impact on building safety, which needs to be urgently examined as part of the scrutiny of the Building Safety Bill.
14. Over the last few years, we have submitted evidence to a series of Committee inquiries relevant to our business, including the consultation on the Draft Bill in September 2020. The majority of this evidence has focussed on the evolving role of a professional freeholder under a new regulatory regime.

15. The Government's own Impact Assessment on the Leasehold Reform (Ground Rent) Bill demonstrates the other negative impacts this legislation will have on the housing market, notably further increasing house prices and creating more barriers to entry for consumers trying to get on the property ladder, which will far outweigh any perceived benefits. Government research has found that removing ground rent will lead to an increase in the price of flats by over 3%, as the consolidated payment of all ground rents will now essentially happen at the point of purchase. The report also concedes that removing ground rent will require future buyers to have higher deposits, or borrow more, and even accepts this "may not be viable" for all potential buyers.
16. The Government can avoid these unintended consequences by implementing an exemption for mixed use buildings in the Bill, which the HCLG Select Committee Inquiry into Leasehold Reform, agreed with. The Committee clearly understood the difference between apartments and houses and recommended different treatment. It is vital that this point is not overlooked in the legislative process.
17. We are therefore requesting that the Committee consider our submission in the context of the progressive policies being pursued by this Government for the benefit of the wider housing market and take a holistic view of what these changes to legislation will mean for consumers.
Put simply, this Bill will not be able to deliver on its stated objectives effectively if professional building managers and owners are removed from the market.
18. With regards to the specific measures contained in this legislation, we have a number of observations and concerns, which we have summarised below.

Role of the freeholder

19. Professional freeholders have a long-term interest in the buildings they own, and it is their role to protect the interests of leaseholders and, above all, ensure they are kept safe.
20. This role, however, encompasses not just building safety, but also maintenance, putting provisions in place for future events, emergency response, insurance, dispute resolution, future development and balancing the needs of various parties who have a vested interest in the building. Professional and institutional freeholders have a much longer term outlook in seeking to maintain and secure the buildings than other parties.
21. Professional freeholders have significant expertise and qualifications to perform this role and hold all parties to account, including managing agents. This is the role that we currently play across all of our sites and would argue that this is precisely the role that a responsible professional freeholder should play with our expertise and operational experience. Currently, we are compensated through a ground rent, which we collect to help fund these associated works. The Government are looking to remove this stream of remuneration, which will compromise our ability to stay in the sector and perform these vital services.
22. A legal extension of these responsibilities – which we welcome - to formalise our role as the 'Accountable Person' would only increase the levels of accountability and drive-up standards, protecting the end-consumer. But this extension will only be effective if the role is very clearly defined, and is not hampered or diluted by conflict or confusion with others' interests.

Building Safety Bill

Accountability in high rise residential buildings

23. The Bill proposes a new regime for the management of higher-risk buildings, including new roles of Accountable Person (“AP”) and Building Safety Manger who will have an ongoing duty to manage the safety of the building. As professional freeholders, we have been urging the Government to introduce robust compulsory regulation for building owners like ourselves, and managing agents, for the past three years. We believe we are well placed to carry this out the role of Accountable Person in line with our existing practice.

The role of Accountable Person and Principle Accountable Person

24. The Bill states that for higher risk buildings with complex ownership structures, there will I be more than one Accountable Person, with a Principle Accountable Person (“PAP”) needing to be identified as well. Having multiple Accountable Persons will serve to create confusion as additional costs as responsibilities will likely overlap. This may also result in disputes on complex sites where the Regulator will be asked to determine who is or isn’t the Principle Accountable Person. Consideration also needs to be given to how the AP / PAP interacts under the proposed Responsible Person as envisioned by the proposed Fire Safety Bill.

25. Furthermore, where a Right to Manage company (RTM) exists, both they and the freeholder would be Accountable Persons due to the obligation to carry out repairs and the ownership of the legal estate respectively. In this situation, currently, the obligation under the lease to maintain the property passes from the freeholder to the RTM company once the process under the Commonhold and Leasehold Reform Act 2002 is invoked. The RTM company then steps into the freeholder’s shoes in all matters of maintenance under the respective lease. The RTM company will also be responsible for communicating with leaseholders in relation to works, and there is minimal requirement for them to communicate with the freeholder.

26. Despite this, under S70(1)(b) in the Bill, where there is more than one Accountable Person, the Principle Accountable Person will be:

“the accountable person who holds a legal estate in possession in the relevant parts of the structure and exterior of the building”

27. This would therefore make the freeholder and not the RTM the Principle Accountable Person because it holds the freehold title. The company would then be liable to sanctions under the Bill if it failed to comply with duties. However, where new obligations are placed on the freeholder, there is no effective mechanism to address the need to implement measures for the property that would normally be the responsibility of the RTM company. For example, the preparation of a Safety Case Report under S85 lies with the Principle Accountable Person, but the information required to produce the case would sit with the RTM company. It is unclear if the mechanisms in the Bill would be sufficient to secure the necessary cooperation between an RTM company and a freeholder to secure compliance with the freeholder’s obligations as Principle Accountable Person in this instance, and other scenarios created by the Bill. These gaps need to be properly addressed.

Implications of the Leasehold Reform (Ground Rent) Bill for building safety

28. The Government's Leasehold Reform agenda and the Leasehold Reform (Ground Rent) Bill, which is currently moving through Parliament, threatens our ability to fulfil these roles which would logically sit with the building owner. With the country in the midst of a national cladding crisis, brought about by a failed regulatory system, and poor building standards from housebuilders, policymakers should be asking serious questions about whether it is appropriate to remove professional oversight of large apartment buildings and leave residents to manage large and complex apartment buildings by themselves, especially if these obligations are being substantially increased through this Bill.
29. A snap poll conducted by Savanta in December 2020 indicates that only 31% of residents would willingly take on the responsibility for managing their block (which would be the case if freeholders were no longer in the market) and 1 in 3 would consider selling if faced with increased obligations (including criminal liabilities) under the proposed Building Safety legislation. An accompanying report, also conducted by Savanta, which was commissioned by the UK's largest professional freeholders, including Long Harbour, found that many residents are reluctant to accept the role of Accountable Person due to concerns around competence, legal exposure and the time commitment required. Of the 1,000 leaseholders interviewed, 75% felt negatively about the new obligations they would have in this position, and 67% were worried about their building not being maintained properly, as well as health and safety issues presented by the proposed leasehold reforms at the time.
30. It is widely accepted that the Scottish model has had a negative impact on building maintenance and the lifespan of residential buildings has shortened significantly. Since 2012 when the legislation was introduced in Scotland, replacing the leasehold system with commonhold, research from the Royal Institute of Chartered Surveyors (RICS) has found that 80% of buildings need some form of repair and leaseholders are unable to fund the £2bn needed for remedial works. Naturally, resident decision making is also often driven by cost and personal interests rather than safety requirements.
31. It is important that this evidence is considered carefully as part of the scrutiny of this Bill. If residents are unwilling or unable to take on these responsibilities then it would be ill-judged to simply increase these responsibilities, in some cases making residents criminally liable.

Failure of Resident Management Companies and Management Companies

32. Another challenge is that the Bill still fails to address what happens in the event that a Resident Management Company (RMC) or Management Company (ManCo) ceases to exist. Where this happens, that building should immediately be placed into special measures and not automatically transferred to the freeholder who has had no oversight of the previous management. We would suggest an obligation is placed upon the freeholder to work collaboratively under the special measures regime to take on this role in an orderly fashion, if required.
33. This is an area the Government must provide further clarity on as evidence of leases in our portfolio clearly shows that this process varies considerably subject to the specific provisions in the lease and often under the current system, if an RMC fails, the obligations to maintain the development do not automatically revert to the freeholder or intermediate landlord.
34. With the above complexities in mind, for the Building Safety Bill to work effectively, the Government needs to reconcile its policy agendas and introduce an exemption for large and

complex apartment buildings in the Leasehold Reform (Ground Rent) Bill so freeholders remain in the market and continue to play a valuable oversight role.

The cost of the new regime for leaseholders and fire safety costs

Building Safety Charge (BSC)

35. The introduction of a Building Safety Charge (BSC) has the potential to be a positive change that will ensure certain charges levied on leaseholders are more transparent.
36. However, the current Landlord and Tenant legislation around service charges already contains protections to ensure that leaseholders do not face excessive charges and that their funds are properly managed. Current costs associated with building safety, such as central monitoring, smoke alarm systems, lighting systems, fire suppressant systems, fire hydrants and extinguishers, fire doors and emergency power systems also all naturally fall into the general service charge already. It is therefore unclear what the Government hopes to achieve through the introduction of a separate BSC.
37. Disputes may also arise as to whether certain categories of expenditure would fall under the BSC or service charge, especially if they're administered differently. Additionally, the Government need to reflect carefully on the need for residents to fund the BSC to enable critical works to be undertaken whilst also protecting them from additional costs.
38. Consideration should be given to obliging residents to implement mandatory Reserve Funding under the Bill. The annual reserve funding should be assessed by an independent body, say every 5 years. The independence means the assessment should be undertaken by a qualified organisation other than the Managing Agent, Freeholder, RMC, Commonhold Association etc. This assessment would calculate the lifecycle costs of maintaining the building, not limited to safety issues, but also regular maintenance and capital items over say a 25 year look forward. An annual budget can then be calculated, and the funding of this budget can be apportioned between the flat owners according to the service charge allocations for any given block.

Conclusion

39. The Building Safety Bill needs to be carefully considered in the context of other policies pursued by this Government; specifically, Leasehold Reform. The compounding effects of this legislation could have far-reaching implications on building management, accountability and, crucially, the safety of apartment buildings. This will have a detrimental impact on consumers and undermine what the Government is trying to achieve through this Bill.

Appendix

Concerns with the Bill as currently drafted	Comments for the Committee
<ul style="list-style-type: none"> The Bill states that for higher risk buildings there will likely be more than one Accountable Person with a Principle Accountable Person needing to be identified as well. 	<ul style="list-style-type: none"> Having multiple Accountable Persons will only serve to create confusion, administration, and additional costs. It may also result in disputes on complex sites where the Tribunal will be asked to determine who is and isn't the Principal Accountable Person. The Bill stipulates that the Principle Accountable Person will be the one who holds a legal estate in possession of the relevant parts of the structure and exterior of the building (i.e. the freeholder). This would mean the freeholder would be liable to sanctions if it failed to comply with the provisions of the Bill, despite the fact that management responsibilities sit with the management company. To comply with its duties, the Principle Accountable Person would need the assistance cooperation of the RTM company in a structure that would not normally be expected.
<ul style="list-style-type: none"> Currently there are problems with how higher-risk buildings have been defined within the Bill and this needs to be resolved. This will have implications for the number of buildings in scope, which will thereby increase the burden of the Bill in terms of cost for multi-occupancy buildings. 	<ul style="list-style-type: none"> The Bill contains various definitions of higher risk buildings depending on whether they are in design, construction and during their occupation. Terminology used to define those buildings that are at greatest risk varies across building safety legislation. Particular attention needs to be paid to types of building that are exempt, as concerns remain that the Government are discriminating based on arbitrary factors (i.e. height and use). The definition of a higher-risk building when occupied is potentially subject to change as Paragraph 62(2) of the Bill empowers the Government to make secondary legislation supplementing the definition. This will have important implications, so it needs to be clarified when this will be brought forward.

<ul style="list-style-type: none"> Conflicts between Building Safety Manager and general Property Manager roles and responsibilities. 	<ul style="list-style-type: none"> The Building Safety Manager (BSM) is supposedly responsible for day-to-day communication with residents. This is not an effective use of their time, particularly given the costs involved with appointing a BSM (estimated to be £60,000 per annum). This will also overlap with responsibilities of a Property Manager and increase costs. There is a requirement to appoint a Building Safety Manager, but no details are given as to the requirements for that role. There is likely to be a shortage of suitable competent persons to fill the roles for each block within the given timescale. There is a need for consistency due to scope for so many different variables.
<ul style="list-style-type: none"> The Bill needs to clarify what is classified as a historic cost, as these are excluded from the building safety charge. 	<ul style="list-style-type: none"> The Bill needs to be clear about what is classed as a historic cost and where these are unable to be included in the building safety charge. This is a crucial issue as safety defects will nearly always be historic if you're uncovering them later down the line.
<ul style="list-style-type: none"> It is not clear how the roles of the Accountable Person and Building Safety Manager outlined in the Building Safety Bill, and the Responsible Persons outlined in the Fire Safety Bill, overlap. 	<ul style="list-style-type: none"> It would be useful to understand how the three duties compliment and overlap with each other to prevent confusion. A consistent duty holder description for residential blocks across both Bills, would also be welcomed.
<ul style="list-style-type: none"> The Bill stipulates that the Principal Accountable Person for an occupied higher risk building must as soon as reasonably practicable operate a system for the investigation of relevant complaints. However, there is no detailed definition of what constitutes a 'relevant complaint', how this should be filed, or when this should be referred to the regulator. 	<ul style="list-style-type: none"> The legislation should also be clearer on what a genuine complaint is and when it must be acted on. How a complaint should be filed would also be helpful, as would guidelines for when these need to be referred to the regulator. Clarity is needed on the resource of the building safety regulator – i.e. will it be proactive or reactive?
<ul style="list-style-type: none"> What's to be included within the Building Safety Charge overlaps with what would normally go in a traditional service charge. 	<ul style="list-style-type: none"> Legal fees, professional fees, regulator fees and management costs are all to be included in the Building Safety Charge, and outside of the service charge. This will increase costs and potentially confuse residents. The legal case law that exists for service charges should be extended to the BSC, particularly in terms of reasonableness and payability principles, which are well trodden areas. It would be better if the administration costs are within the service charge, with a

	<p>requirement to clearly split them out in the accounts.</p>
<ul style="list-style-type: none"> • A general difficulty exists in planning for compliance across a wide estate within the timeframe. Issues are also anticipated with securing the resource to achieve this goal. • Compliance is also hampered by the lack of details regarding obligations created under the Bill. 	<ul style="list-style-type: none"> • High-Risk Buildings must be registered with the Building Safety Regulator. That obligation will eventually apply to both newly built and existing buildings. Paragraph 72 requires the Principle Accountable Person to register a building prior to occupation (for new builds, but for existing stock you'll be registering a building that's already occupied) and creates an offence punishable by a custodial sentence of up to 2 years plus a fine. There is an obligation to register Higher-Risk buildings under Paragraph 75, but there are no details as to what information will be required to achieve registration. Further regulations may be issued so the requirements for registration may also change. • There is a requirement to compile a Safety Case Report but the requirement of what is to be contained in that document lacks detail. We need guidance on this. • The obligation to apply for a building assessment certificate under Paragraph 74, where directed to do so by the Regulator, gives no guidance as to what criteria the Regulator will apply when deciding whether any given building requires a building assessment certificate. What will happen if a building is not safe? • The application for a building assessment certificate, if required, must be accompanied by "prescribed information". There is no guidance as to what prescribed information may be. Paragraph 75 (2) provides that further regulations as to the form and content of the application may be given, but until they are, it is impossible to plan for compliance. • It's also unclear whether an Accountable Person will typically be a corporate body or a named individual, or both? • With the requirement to collect and maintain "prescribed information", for the case of older buildings, information concerning the construction of the building

	<p>may not be available. If there is a need to survey properties to establish as far as possible the construction details, there will be a demand for surveyors that will impact on both cost and timescale of that information becoming available.</p> <ul style="list-style-type: none">• There are sanctions for failure to comply with the requirements, but no details as to how compliance is to be achieved until further regulations are passed.
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